



MARRIAGE LICENSE ISSUANCE PROCESS

NEW LAWS

SB 1836 RELATING TO THE FUNDING OF THE TEXAS HOME VISITING PROGRAM.

Section 191.0048 was added to the Texas Health and Safety code allowing the State Registrar, County Clerks and Local Registrars to collect a voluntary contribution of \$5.00 from purchasing a certified copy of a birth, marriage or divorce record. This donation is to promote healthy early childhood supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of HHSC.

www.texashomevisiting.org



SB 1836 RELATING TO THE FUNDING OF THE TEXAS HOME VISITING PROGRAM.

A printed box for each applicant of marriage license to check indicating that the applicant wishes to make a voluntary contribution of \$5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission will also be added to the Marriage License application. [FC §2.004 (b)(13)]



SB 1836 RELATING TO THE FUNDING OF THE TEXAS HOME VISITING PROGRAM.

VSU is required to allow for applicants requesting certified copies of birth records, marriage verifications and divorce verification, to make a voluntary :

- HSC 191.0048(b) On each paper or electronic application form for a copy or certified copy of a birth, marriage, or divorce record, the bureau of vital statistics ***shall*** include a printed box for the applicant to check indicating that the applicant wishes to make a voluntary contribution of \$5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

Local registrars and County Clerks are not:

- HSC 191.0048 (c) a local registrar or county clerk ***may*** collect the additional voluntary contribution under this section.

EXPIRATION OF MARRIAGE LICENSE

If a marriage ceremony has not been conducted before the 90th day after the date the license is issued, the marriage license expires [FC §2.201]

SCENARIO ONE

Jenny has come into the county clerk's office to purchase a marriage license. Her boyfriend, Spike, is currently incarcerated. She provides you with an notarized absent applicant affidavit completed by Spike. The absent applicant affidavit indicates that he will be present for the ceremony.

Can the county clerk issue the marriage license to Jenny?

ABSENT APPLICANT REQUIREMENTS

(c) the clerk may not issue a marriage license for which both applicants are absent unless the person applying on behalf of each absent applicant provides to the clerk an affidavit of the applicant declaring that the applicant is a member of the armed forces of the United States stationed in another country in support of combat or another military operation



ABSENT APPLICANT AFFIDAVIT REQUIREMENTS

(8) the appointment of any adult, other than the other applicant, to act as proxy for the purpose of participating in the ceremony, if the absent applicant is:

- (A) a member of the armed forces of the United States stationed in another country in support of combat or another military operation; and
 - (B) unable to attend the ceremony.
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ABSENT APPLICANT AFFIDAVIT REQUIREMENTS

What does all that mean?

- Anyone can still apply on behalf of an absent applicant.
 - Only someone who is in the military stationed overseas can appoint a proxy to stand in for them during the wedding.
 - If they are an absent applicant and not deployed overseas military personnel, they have to present for the ceremony.
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SCENARIO TWO

Colin has been asked by a couple of friends to perform their marriage ceremony. Colin goes on the internet and gets ordained online to be a Reverend in the Church of the Sub-Genius. Before he performs the ceremony, he decided to check with the county clerk's office to see if he can perform the marriage ceremony.

What should you tell him?



PERSONS AUTHORIZED TO CONDUCT A MARRIAGE CEREMONY [FC 2.202]

- **a licensed or ordained Christian minister or priest;**
 - **a Jewish rabbi;**
 - **a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony;**
and
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PERSONS AUTHORIZED TO CONDUCT A MARRIAGE CEREMONY [FC 2.202]

Justice of the supreme court,

Judge of the court of criminal appeals,

Justice of the courts of appeals,

Judge of the district, county, and probate courts,

Judge of the county courts at law,

Judge of the courts of domestic relations,

Judge of the juvenile courts, retired justice or judge of those courts,

Justice of the peace, retired justice of the peace,

Judge or retired judge of a municipal court,

Judge or retired judge or magistrate of a federal court of this state.



DO OFFICIATES HAVE TO CHECK WITH THE STATE BEFORE THEY PERFORM A CEREMONY?

There is no official registration for persons authorized to conduct a marriage ceremony.

If they review the law and believe they can perform the marriage ceremony then they can perform the ceremony.

The validity of a marriage is not affected by the lack of authority of the person conducting the marriage ceremony if [FC 2.302]:

- (1) there was a reasonable appearance of authority by that person;
 - (2) at least one party to the marriage participated in the ceremony in good faith and that party treats the marriage as valid
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SCENARIO THREE

Richard and Elizabeth want to get married. They have come into your office and purchased a marriage license. Right after getting the to the Justice of the Peace and the he performs the ceremony without getting 72 hour waiting period exception waiver. They come right back to your office after the ceremony to file the marriage license.

Can the county clerk still file the marriage license?



MARRIAGE LESS THAN 72 HOURS AFTER ISSUANCE OF LICENSE [FC §6.110].

(a) The court may grant an annulment of a marriage to a party to the marriage if the marriage ceremony took place in violation of Section 2.204 during the 72-hour period immediately following the issuance of the marriage license.

(b) A suit may not be brought under this section after the 30th day after the date of the marriage.



MARRIAGE LESS THAN 72 HOURS AFTER ISSUANCE OF LICENSE [FC §6.110].

If the 72 Hour waiting period has not been properly waived and the ceremony is conducted anyway, the county clerk should still file the marriage license.

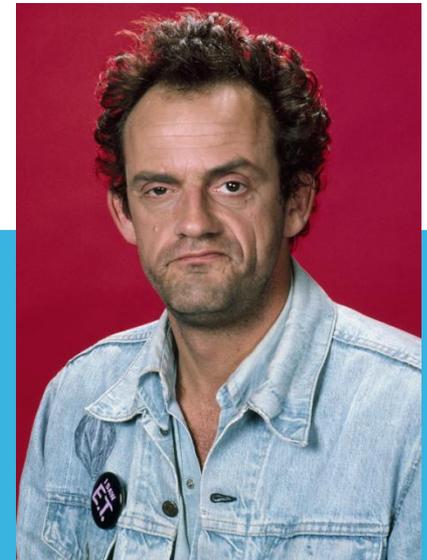
The person who conducted the marriage ceremony is the person at fault not the county clerk.

**The county clerk shall record a returned marriage license and mail the license to the address indicated on the application.
[FC §2.208]**

SCENARIO FOUR

Sammy and Delilah purchased a marriage license on January 25th. The day of the ceremony, May 5th, Rev. Jim failed to look to see if the marriage license was still valid and conducted the ceremony anyway. Rev. Jim signed the license and mailed it into the County Clerk's office.

1. Can the county clerk accept the license?
2. Is the marriage valid?



CAN THE COUNTY CLERK ACCEPT THE LICENSE?

FC §2.208. RECORDING AND DELIVERY OF LICENSE:

- (a) The county clerk shall record a returned marriage license and mail the license to the address indicated on the application.**
- (b) On the application form the county clerk shall record:**
 - (1) the date of the marriage ceremony;**
 - (2) the county in which the ceremony was conducted;**
 - and**
 - (3) the name of the person who conducted the ceremony.**

WHY CAN'T THE COUNTY CLERK REJECT THE LICENSE?

There is nothing in state law that allows for a county clerk's office to reject a marriage license.

Difference between birth and death records and marriage licenses is that the law specifically allows for a birth or death record to be rejected. There is nothing in the Family code that allows the same for marriage licenses.

HSC §191.027. REVIEW OF CERTIFICATE BY LOCAL REGISTRAR

(a) The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required by this title and by the state registrar's instructions.

(b) If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return.

(c) If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained.

SCENARIO FIVE

Beyonce pulled out her and Jay-Z's marriage license to take the license to SSN so she can get her last name changed to Z. On closer inspection she noticed that the her name was spelled incorrectly (Beyonse Knowles). She wants to get the marriage license corrected but Jay-Z is on tour in Europe.

Can she correct the marriage license?



AMENDMENT TO MARRIAGE LICENSE

If one or both parties to a marriage license discover an error on the recorded marriage license:

- both parties to the marriage shall execute a notarized affidavit stating the error.
- The county clerk shall file and record the affidavit as an amendment to the marriage license, and the affidavit is considered part of the marriage license.
- The clerk shall include a copy of the affidavit with any future certified copy of the marriage license issued by the clerk.

SCENARIO SIX

Jimmy is stationed in Afghanistan. His fiancé Jenny has come into the county clerk's office to purchase a marriage license application. Jimmy has completed the Affidavit of Absent applicant but has not appointed a proxy because they intend to have the conduct the ceremony via Skype.

1. Can the ceremony take place over Skype?
2. Is the marriage valid?



CAN THE CEREMONY TAKE PLACE OVER SKYPE?

- **There is nothing in state law that indicates where or how the ceremony is to be conducted.**
- **The only information about the ceremony is in regards to the time periods referred to in FC 2.201 (expiration of license), FC 2.202 (person's authorized to conduct ceremony) and FC 2.204 (72-hour waiting period).**

IS THE MARRIAGE STILL VALID?

FC 1.101 In order to promote the public health and welfare and to provide the necessary records, this code specifies detailed rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide for an orderly determination of parentage and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless a strong reason exists for holding the marriage void or voidable. Therefore, every marriage entered into in this state is presumed to be valid unless expressly made void by Chapter 6 or unless expressly made voidable by Chapter 6 and annulled as provided by that chapter.



SCENARIO SEVEN

Scott and Sara were legally married in 2005. Scott has gone through gender reassignment and is officially a female now.

1. Is their marriage from 2005 still valid?
2. Can they use that marriage license as proof of marriage?



IS THE MARRIAGE STILL VALID?

The law states:

FC 6.204. RECOGNITION OF SAME-SEX MARRIAGE OR CIVIL UNION.

(a) In this section, "civil union" means any relationship status other than marriage that:

- (1) is intended as an alternative to marriage or applies primarily to cohabitating persons; and
- (2) grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.

(b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.

(c) The state or an agency or political subdivision of the state may not give effect to a:

- (1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or
- (2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

IS THE MARRIAGE STILL VALID?

The Texas Constitution states:

Article 1 Section 32 (a) Marriage in this state shall consist only of the union of one man and one woman.

If they ask you whether their marriage is still valid, suggest they contact an attorney regarding that question.

CAN THEY USE THAT LICENSE AS PROOF OF MARRIAGE?

It would be up to each individual entity that they are presenting that marriage license.

Exp. If they presented the marriage license to VSU as proof of marriage, VSU would not be able to accept the documents because VSU “may not give effect to a public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction;” [FC 6.204]

If the document is being presented to your office as proof of marriage, please contact your legal department for guidance.

SCENARIO EIGHT

Frank and Ava are planning on having a formal wedding sometime in the near future. However, they have decided to complete a declaration and registration of informal marriage now. The county clerk completes the declaration and registration of informal marriage and hands it to couple. Frank and Ava want a certificate to go with it?

1. Can the county clerk provide them with a certificate of informal marriage?
2. Can Frank and Ava have a formal ceremony later even though they have completed an declaration and registration of informal marriage?



CAN THE COUNTY CLERK PROVIDE THEM WITH A CERTIFICATE OF INFORMAL MARRIAGE?

Certificate of Informal Marriage 2.404 (a-1):

On the proper execution of the declaration, the clerk may:

- prepare a certificate of informal marriage;
 - enter on the certificate the names of the persons declaring their informal marriage and the date the certificate or declaration is issued; and
 - record the time at which the certificate or declaration is issued.
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CAN FRANK AND AVA HAVE A FORMAL CEREMONY LATER EVEN THOUGH THEY HAVE COMPLETED AN DECLARATION AND REGISTRATION OF INFORMAL MARRIAGE?

FC 2.009 (b) If an applicant checks "false" in response to the statement "I am not presently married and the other applicant is not presently married," the county clerk shall inquire as to whether the applicant is presently married to the other applicant. If the applicant states that the applicant is currently married to the other applicant, the county clerk shall record that statement on the license before the administration of the oath. The county clerk may not refuse to issue a license on the ground that the applicants are already married to each other.



OUR WEBSITE:

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SEE YOU IN DECEMBER

ENJOY YOUR SUMMER